

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

July 20, 2005

Larry F. Wilson
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

RE: Larry F. Wilson v. S.C.I. Classification Dept., C.A. No. 05M-07-002

DATE SUBMITTED: July 11, 2005

Dear Mr. Wilson:

Petitioner Larry F. Wilson (“petitioner”) has filed a petition seeking a writ of mandamus (“petition”) and a motion to proceed in forma pauperis. I have reviewed both, and this is my decision granting the motion to proceed in forma pauperis but dismissing the petition.

Petitioner has filed the information required to support his motion to proceed in forma pauperis. 10 Del. C., ch. 88. He has established he is indigent. Accordingly, I grant the motion to proceed in forma pauperis. That does not, however, mean that the action proceeds. Instead, the Court reviews the petition to determine if it is factually or legally frivolous or if it is malicious. 10 Del. C. §8803(b).

Petitioner asks that the Court enter an order instructing that the Sussex Correctional Institution’s (“S.C.I.”) Classification Department place him in the Greentree Program. In connection

with this pending case, it is necessary also to review the files of State v. Wilson, Def. ID#s 0502008703 and 0501014684. The sentencing order in those matters dated June 6, 2005, shows the following.

With regard to Cr. A. No. 05-02-0483, the Court sentenced petitioner as follows:

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision Level 5 with credit for 127 day(s) previously served.
- Upon successful completion at supervision level 5 **GREENTREE PROGRAM**
- Balance of sentence is suspended for 1 year(s) supervision level 4 **RESIDENTIAL SUBS. ABUSE TREATMENT**
- **Upon successful completion at supervision level 4 RESIDENTIAL SUBS. ABUSE TREATMENT PRG.**
- Balance of sentence is suspended for 18 month(s) supervision level 3 **AFTERCARE**
- Hold at supervision level 5
- Until space is available at supervision level 4 **RESIDENTIAL SUBS. ABUSE TREATMENT PRG.**

According to his petition, the Department of Correction has concluded petitioner does not fit the criteria for the Greentree Program, and it is classifying him to “Super Max Smyrna”. His petition requests that the Court order respondent to classify him for the Greentree Program.

As the Supreme Court explained in Guy v. Greenhouse, Del. Supr., No. 285, 1993, Walsh, J. (December 30, 1993):

Under Delaware law, the basis for issuance and the scope of relief available through a writ of mandamus under Delaware law are both quite limited. Mandamus is issuable not as a matter of right, but only in the exercise of sound judicial discretion. Moreover, when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty. For a duty to be ministerial and thus enforceable by mandamus, the duty must be

prescribed with such precision and certainty that nothing is left to discretion or judgment. [Citations omitted.]

Accord Taylor v. State, 716 A.2d 975 (Del. 1998); Washington v. State, 713 A.2d 932 (Del. 1998).

In addition, a writ of mandamus is inappropriate where a petitioner has an adequate remedy at law available to him. Taylor v. State, *supra*.

In the case at hand, there is no clear legal or ministerial duty existing on the part of respondent with regard to petitioner's participation in the Greentree Program; i.e., the Court did not order that respondent place him in the Greentree Program and keep him there until he completes it. Respondent has the discretion to determine whether petitioner may participate in the program and petitioner has no constitutionally protected liberty interest in his prison classification status. Winward v. Taylor, 788 A.2d 133 (Del. 2001); Phillips v. Department of Correction, Del. Super., C.A. No. 03M-12-014, Graves, J. (March 2, 2004). See Bagwell v. Prince, 683 A.2d 58 (Del. 1996) (respondent's decisions regarding placement of inmates is discretionary). Since no clear legal or ministerial duty exists, then petitioner has no right to a writ of mandamus. Accordingly, I dismiss the petition with prejudice.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office

State v. Wilson, Def. IDs# 0502008703 and 0501014684

Ophelia M. Waters, Esquire